

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 319 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KALUBHAI GABABABHAI TALAR

Versus

STATE OF GUJARAT

Appearance:

MR MA KHARADI for Petitioner
MR SA PANDYA, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA
Date of decision: 07/08/97

ORAL JUDGEMENT

Rule. Ld.APP Mr.S.A.Pandya waives the service of Rule.

The accused petitioner is facing the trial before the Court of ld.JMFC, Lunawada, District Panchmahals, for offences under Section 5, Sub-section (3) of Section 25,

Sections 18 and 19 of the Bombay Money Lenders Act, 1946. He came to be convicted for the aforesaid offences at the end of the trial and was awarded SI for one month and fine of Rs.200/- for each offence. Accordingly, he had to pay a fine of Rs.800/- and to undergo SI for one month in respect of each of the offences.

The matter was carried by way of appeal, being Criminal Appeal No.1 of 1995, before the Court of Id. Sessions Judge, Panchmahals, at Godhra. By judgment dated 5th July 1995, the Id.Addl. Sessions Judge, rejected the appeal and confirmed the order of the trial Court.

In this revision application, the only request made is as to the grant of probation. No doubt, the main prayer is that the judgment be set aside. The aforesaid request, therefore, is in the alternative.

In view of the concurrent findings of fact, in revision application, there is no question of re-considering the evidence and, therefore, setting aside the order of the Court below does not arise.

The Courts below, however, in my opinion, did not appreciate the submission as to the grant of probation in proper spirit and, therefore, to that extent, there is a scope to consider the said alternative request.

The Probation Officer's report was definitely there at Exh.30 before the trial Court. The record being available before the Court today, the original report which is at Exh.30 is seen and the details investigation of the concerned Probation Officer revealed that the petitioner is eligible to get the benefit of Probation of Offenders Act.

In an offence of the aforesaid nature, the said benefit is required to be given more particularly, when the Probation Officer himself is of the opinion that the petitioner deserves the same. Proper care of being prevented from repeating the incident can be taken care of by making the Probation Officer to visit periodically the place of the petitioner and making periodical report to the trial Court.

While confirming the order of conviction in place of sentence, it is decided to grant the benefit of probation to the petitioner. The order of sentence is, therefore, set aside. The petitioner is directed to execute a bond of Rs.2,000/- (Rupees Two thousand only)

before the trial Court within a period of three weeks from today. The said condition is being imposed for binding himself to be of good character and to maintain peace and to maintain law and order and not to indulge in any activity of the nature complained against and the said bond shall remain in force for a period of two years. The Probation Officer shall, initially, for a period of six months, make monthly visit and corresponding monthly report to the trial Court and, thereafter shall make quarterly visit and make corresponding quarterly report to the trial Court as to the good behaviour of the petitioner. In case the petitioner fails to maintain peace and behaviour or commits breach of any of the conditions of the bond as ordered to be executed, he shall be called by the trial Court before it to receive the order of sentence that may be awarded to him after hearing him as to the sentence according to the circumstances then prevailing. The petition is allowed to the aforesaid extent. Rule is made absolute to that extent only.

sreeram.